

DATE: 1/16/3

FILE REF: NR 445

TO: File

FROM: Michael D. Scott, LS/5

SUBJECT: Hearing Examiner's Report for AM -34- 02

In August of 2002, five (5) public hearings were held to receive comments from the public, respond to questions, and provide information regarding a proposed rule, number AM – 34 – 02, which pertains to proposed revisions of chapter NR 445, Wis. Adm. Code. NR 445 relates to the control of hazardous air pollutants. Michael D. Scott of the Bureau of Legal Services was the hearing examiner at each of the five hearings and conducted said hearings. Appearance slips were filled out and turned in by the persons in attendance and are on file with the Department. In addition, each hearing was tape-recorded and such recording constitutes the official record of the hearings. The original tapes are also on file with the Department. This report details the attendance, comments, and other pertinent information regarding each public hearing.

1. The first hearing was held on Monday August 19th, 2002 at 4PM at the Appleton Public Library in Appleton, Wisconsin. Although a large crowd was anticipated, only five (5) members of the public were present. One of these members of the public refused to submit an appearance slip. All five members of the public were from industry. One indicated on his appearance slip “as interests may appear,” one indicated “in opposition”, the others did not indicate.

There were no comments presented. Several questions were presented, however, concerning sources subject to existing and proposed MACT Stds., the NR 445 and MACT interface, whether there would be new thresholds for construction permits, reporting requirements, and whether guidance would be developed. These questions were answered by DNR staff in attendance at the hearing.

2. The second hearing was held on Tuesday August 20th, 2002 at 4PM at the Wood County Courthouse in Wisconsin Rapids, Wisconsin. Despite a local publicity push to drum up interest, only two (2) members of the public were present for the hearing, both with ties to the League of Women Voters. Both appeared in support of the rule.

In addition, both persons presented oral comments. The first, Ms. Sharon Schwab, expressed her support for the rule and commented on cumulative, synergistic impacts, county health concerns, risk factors, exposure routes, and accountability. She also stated that she would be submitting written comments as well. The second person, Ms. Marion Ruelle, commented that the proposed revisions were necessary, that the League has presented forums, and that air quality was an issue in Wood County. She also presented written comments at the hearing, which are attached. No questions were presented.

3. The third hearing was held on Thursday August 22nd, 2002 at 2PM at the La Crosse County Courthouse in Appleton, Wisconsin. As with the previous hearing, only two people were in attendance; both were from industry and were “as interests may appear.” One individual, Mr. Aaron Gesicki, commented. His comments were that DNR shouldn’t list HAPs unless we had the necessary info, and questioned how EPA’s “GACT” standards and those companies subject to GACT standards would be regulated, opining that if GACT applies, that that should be sufficient. Again, no questions were presented.

4. The fourth hearing was held on Monday August 26th, 2002 at 1:30PM at the DNR Headquarters in Madison, Wisconsin. This hearing was well attended, as sixteen (16) members of the public were present. As was the case in the hearing in Appleton, however, not everyone filled out an appearance slip. Fourteen appearance slips were submitted; six indicated “as interests may appear,” five indicated “in opposition,” one indicated support for some of the rule and opposition for other parts, and two were blank. Nine participants were from industry; five were members of the general public, and two represented environmental or public interest groups.

Three people presented comments. The first, Mr. Trevor Kaul, stressed the importance of clean air and that Wisconsin is a friendly place (Mr. Kaul is originally from Australia). He went on to say, however, that we were vulnerable to lots of chemicals – some 80,000. He listed some key points: first, regulate all chemicals known to be hazardous. Second, add chemicals to NR 445 as they become known to be hazardous. Third, address cumulative effects/impacts. And fourth, responsible parties should be held accountable; there should be no safe harbor provision in the rule.

The second person to comment, Ms. Kerry Schuman, represented Wisconsin Public Interest Research Group (WISPRG) and commented that there were 80,000 chemicals in use by industry and that many were released into the air. Also, that chemicals can be harmful, but the health effects are known of only a small percentage of these and there may also be cumulative health effects. WISPRG supports the rule, and supports a change to risk-based thresholds for carcinogens. However, they are concerned about loopholes, specifically: one, there should be protection from all sources; the listing process should be such that it can quickly process new chemicals. Two, we should assess health threats from total (i.e. cumulative) exposure. Three, set stronger risk-based thresholds at a one in one million risk level. And four, hold industry accountable for unsafe emissions.

The third person to speak was Mr. Jeff Schoepke, representing Wisconsin Manufacturers and Commerce (WMC). He spoke in opposition to the rule, commenting that a cost study showed the rule would be expensive to implement, costing \$200,000 per company. Although WMC likes the due diligence and safe harbor additions to the rule and that companies can challenge a listing, he stated that the rule was still fundamentally flawed. Some of the flaws included the use of lists from outside sources, and regulatory thresholds.

As with the Wisconsin Rapids and La Crosse hearings, no questions were presented.

5. The fifth and final hearing was held on Tuesday August 27th, 2002 at 4PM at the DNR Southeast Regional Headquarters in Milwaukee, Wisconsin. Four (4) members of the public were present; three indicated “as interests may appear” and one had no indication. Three were from industry, one was a citizen.

One person commented, although his comments were more question oriented than actual comments. Mr. Robert Heitzer commented, or questioned, why acetone and CO were listed. He also had a question about flour dust and whether people knew about this pollutant. These questions were answered by DNR staff present.

The original appearance slips, tape recordings, and hearing examiner notes (or copies thereof) are available upon request.

CC: Jeff Myers, AM/7
Andy Stewart, AM/7
Caroline Garber, AM/7
Lloyd Eagan, AM/7